EX PARTE OR LATE FILED

Southern New England Telephone
227 Church Street
New Haven, Connecticut 06510
Tel 203. 771.8514
Fax 203. 624.3549
Email wendy.bluemling@SNET.com

Wendy Bluemling
Director - Regulatory Affairs

DOCUMENT FILE COPY ORIGINAL

June 26, 1997

RECEIVED

JUN 26 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MCI Petition For Rulemaking, RM-9085, File No. CCB/CPD 97-19 **EX PARTE**

Dear Mr. Caton:

Attached is a copy of The Southern New England Telephone Company's (SNET's) Motion to Dismiss or Stay On Grounds of Primary Jurisdiction, the complaints filed by MCI Telecommunications Corporation and AT&T Corp. (Plaintiffs) with the United States District Court for the District of Connecticut. The Plaintiffs ask the Court to determine what steps a local telephone company may or may not take to protect its customers from slamming and to enforce that policy by issuing an injunction. SNET contends that the FCC should exercise primary jurisdiction over the claims raised in these actions as Congress has given the Commission extensive authority over the practices complained of in this proceeding.

SNET is filing a copy of this Motion to be included in the record in this proceeding. This letter is filed in accordance with Section 1.1206(a)(1) of the Commission's rules, two (2) copies of this letter are being filed today.

Sincerely,

Wendy Bluemling

Attachment

Copy: Mr. William Bailey, Competitive Pricing Division, Common Carrier Bureau
International Transcription Services (ITS)

No. of Copies rec'd 0+2
List A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MCI TELECOMMUNICATIONS CORPORATION, Plaintiff, v. THE SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY and SNET AMERICA, INC., Defendants.	:	CIVIL ACTION NO. 3:97CV00810 (AHN)
AT&T CORP., Plaintiff, v. SOUTHERN NEW ENGLAND TELEPHONE COMPANY, SNET AMERICA, INC. and SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, Defendants.	:	CIVIL ACTION NO. 3:97CV01056 (AHN) JUNE 23, 1997

DEFENDANTS' EXPEDITED MOTION TO STAY ALL DISCOVERY AND OTHER PROCEEDINGS PENDING RULING ON MOTION TO DISMISS OR STAY ON GROUNDS OF PRIMARY JURISDICTION

The defendants in these consolidated actions seek to stay all discovery and other proceedings in these cases pending a ruling by the Court on the defendants' motion to dismiss or stay on grounds of primary jurisdiction. This Court has previously scheduled dates for filing a motion to dismiss for failure to state a claim under Rule 12(b)(6). In addition, the parties are scheduled to participate in a discovery conference by telephone with Magistrate Judge

ORAL ARGUMENT REQUESTED

Fitzsimmons two days from now, on June 25, 1997. Consequently, the defendants seek an expedited ruling on this motion.

In support of this motion, the defendants rely on the accompanying memorandum of law, as well as on the papers filed in support of the motion to dismiss or stay on grounds of primary jurisdiction.

WHEREFORE, the defendants respectfully request that the Court stay all discovery and other proceedings in these cases during the time that the motion to dismiss or stay on grounds of primary jurisdiction remains pending.

DEFENDANTS
SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY and SNET AMERICA, INC.

By: 

Robert M. Langer, ct06305
Jeffrey R. Babbin, ct10859
Bonnie L. Patten, ct12931
Wiggin & Dana
One CityPlace
Hartford, CT 06103-3402
(860) 297-3700

Madelyn M. DeMatteo, ct13222
Alfred J. Brunetti, ct08026
Edward J. Fitzgerald, ct08471
227 Church Street
New Haven, CT 06510
(203) 771-5200

ORDER

Having considered the defendants' motion to stay all discovery and other proceedings pending this Court's ruling on the motion to dismiss or stay on grounds of primary jurisdiction, it is hereby ORDERED that said motion is GRANTED. All previous scheduling orders entered in these actions are hereby VACATED, except to the extent that such orders address proceedings on the defendants' pending motion to dismiss or stay on grounds of primary jurisdiction.

Dated at Bridgeport, Connecticut this _____ day of _____, 1997.

BY THE COURT

_____
Alan H. Nevas
Senior United States District Judge

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of June, 1997 a copy of the foregoing has been sent to the following:

By Fax & Overnight Courier
Paul E. Knag, Esq.
Joshua W. van Hulst, Esq.
Cummings & Lockwood
Four Stamford Plaza
P.O. Box 120
Stamford, CT 06904-0120

By Hand Delivery
David L. Belt, Esq.
Jacobs, Grudberg, Belt & Dow, P.C.
350 Orange Street
P.O. Box 606
New Haven, CT 06503-0606

By Overnight Courier
Lee A. Freeman, Jr., Esq.
Glynna W. Freeman, Esq.
Chris C. Gair, Esq.
Freeman, Freeman & Salzman, P.C.
401 North Michigan Ave., Ste. 3200
Chicago, IL 60611-4207

Bonnie L. Patten

P:9676\811\MOT0002_.JRB

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MCI TELECOMMUNICATIONS CORPORATION, Plaintiff, v. THE SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY and SNET AMERICA, INC., Defendants.	:	CIVIL ACTION NO. 3:97CV00810 (AHN)
AT&T CORP., Plaintiff, v. SOUTHERN NEW ENGLAND TELEPHONE COMPANY, SNET AMERICA, INC. and SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, Defendants.	:	CIVIL ACTION NO. 3:97CV01056 (AHN) JUNE 23, 1997

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR EXPEDITED MOTION TO STAY ALL DISCOVERY AND OTHER PROCEEDINGS PENDING RULING ON MOTION TO DISMISS OR STAY ON GROUNDS OF PRIMARY JURISDICTION

On this day, pursuant to the Court's scheduling order in these consolidated actions, the defendants have moved to dismiss the complaints or stay all proceedings on the complaints on grounds of primary jurisdiction.[1/] As those motion papers demonstrate, the issues in these cases fall squarely within the jurisdiction of the Federal Communications Commission ("FCC").

---

[1] The scheduling order requires MCI and AT&T to respond by July 18, 1997, and requires SNET to file a reply, if any, by July 28, 1997.

Indeed, the plaintiffs have pending before the FCC a request that the FCC affirmatively resolve their dispute with the defendants. The FCC is fully empowered under its broad mandate from Congress to take all necessary action, and grant all appropriate measures, to secure the relief sought by the plaintiffs in these cases.

Although the defendants have now moved under the primary jurisdiction doctrine, the Court's previous scheduling orders remain in effect, requiring the defendants to file their planned motion to dismiss for failure to state a claim under Rule 12(b)(6) by July 11, 1997.[2/] In addition, under the supervision of Magistrate Judge Fitzsimmons, the defendants have been negotiating in good faith with the plaintiffs regarding the scope of plaintiffs' initial document requests. In furtherance thereof, the parties are scheduled to participate in a telephone conference with Magistrate Judge Fitzsimmons two days from now, on June 25, 1997.[3/] However, because the defendants have presented a substantial argument in favor of invoking the primary jurisdiction doctrine, this Court should not require the parties to continue litigating in court or engaging in discovery during the time it takes to consider and rule on the defendants' primary jurisdiction motion. For the defendants to file a motion to dismiss under Rule 12(b)(6), or for any of the parties to take discovery in preparation for trial or motions for summary judgment, would defeat the whole purpose of the primary jurisdiction doctrine.

---

[2] The scheduling order requires MCI and AT&T to respond by August 4, 1997, and requires SNET to file a reply, if any, by August 18, 1997.

[3] The defendants, since the first chambers conference with Magistrate Judge Fitzsimmons on May 22, 1997, have stated clearly to the plaintiffs that they intend to move the Court to stay discovery and all other proceedings until the defendants' primary jurisdiction motion has been heard and acted upon by the Court. See Letter to Magistrate Judge Fitzsimmons from Robert M. Langer, dated June 10, 1997, attached.

The Court should not interfere with or pre-judge the FCC's handling of the issues. So, for example, "to engage in an analysis of whether injunctive relief should issue in this case, would require the court to analyze the underlying merits of the case, thereby encroaching into the FCC's primary jurisdiction." Total Telecommunications Servs., Inc. v. American Tel. & Tel. Co., 919 F. Supp. 472, 483 (D.D.C.), aff'd w/o opinion, 99 F.3d 448 (D.C. Cir. 1996). The FCC's consideration of the policy and factual concerns raised by MCI and AT&T could also greatly simplify and perhaps eliminate issues that have to be litigated in court. See Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 60 (2d Cir. 1994). It makes no sense for the parties to jump headfirst into extensive and expensive discovery practice, under the supervision of the Magistrate Judge, if these cases will be streamlined or resolved entirely by deferring to the FCC's primary jurisdiction.[4/]

This Court has in other cases stayed discovery and all motions practice when deferring to the FCC under the primary jurisdiction doctrine. See GTE Sprint Communications Corp. v. Downey, 628 F. Supp. 193, 196 (D. Conn. 1986) (Nevas, J.). The Court similarly did so when deferring to the Federal Energy Regulatory Commission. See Connecticut Light & Power Co. v. South Eastern Conn. Reg'l Resources Recovery Auth., 822 F. Supp. 888, 892 (D. Conn. 1993) (Nevas, J.). There is no valid reason not to institute that stay during the time it takes for the Court to decide whether the primary jurisdiction doctrine applies to these cases. The defendants should not have to incur the enormous expense and burden of MCI's and AT&T's comprehensive discovery requests, calling for truckloads of documents, when the case may well be dismissed or

---

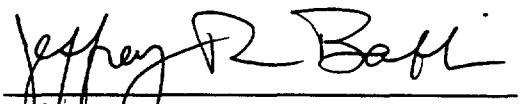
[4] Any argument that MCI and AT&T might make that discovery obtained in these actions could be useful in proceedings before the FCC would not support their effort to expedite discovery while the Court is considering whether to dismiss or stay these actions. The Federal Rules do not permit discovery for the purpose of bolstering claims brought in another forum.

stayed in the near future, and when MCI and AT&T would suffer no discernable prejudice from a brief stay of discovery during this very early stage of these cases. See In re First Constitution Shareholders Litig., 145 F.R.D. 291, 294 (D. Conn. 1991) (granting stay of discovery pending ruling on motion to dismiss); cf. Greenham Women Against Cruise Missiles v. Reagan, 591 F. Supp. 1332, 1335 (S.D.N.Y. 1984) (staying discovery pending decision on whether complaint raises nonjusticiable political question), aff'd, 755 F.2d 34 (2d Cir. 1985); see also Hal Leonard Publ'g Corp. v. Future Generations, Inc., 1994-1 Trade Cas. (CCH) ¶ 70,585, 1994 WL 163987 (S.D.N.Y. 1994) (staying discovery on issues relevant to second phase of bifurcated trial pending resolution of first phase that could significantly narrow issues).

Accordingly, the defendants request that the Court act expeditiously to stay discovery and all other proceedings, including the requirement that defendants file their Rule 12(b)(6) motion by July 11, 1997.

Respectfully submitted,

DEFENDANTS
SOUTHERN NEW ENGLAND
TELECOMMUNICATIONS CORPORATION,
THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY and SNET
AMERICA, INC.

By: 

Robert M. Langer, ct06305
Jeffrey R. Babbin, ct10859
Bonnie L. Patten, ct12931
Wiggin & Dana
One CityPlace
Hartford, CT 06103-3402
(860) 297-3700

Madelyn M. DeMatteo, ct13222
Alfred J. Brunetti, ct08026
Edward J. Fitzgerald, ct08471
227 Church Street
New Haven, CT 06510
(203) 771-5200

Wiggin & Dana

Counsellors at Law

Offices in:
New Haven
Hartford and
Stamford

One CityPlace
185 Asylum Street
Hartford, Connecticut
06103-3402
Telephone 860.297.3700
Telefax: 860.525.9380

Robert M. Langer
860.297.3724

VIA HAND DELIVERY

June 10, 1997

The Honorable Holly B. Fitzsimmons
United States Magistrate Judge
United States District Court
915 Lafayette Boulevard
Bridgeport, CT 06604

Re: **MCI Telecommunications Corporation v. The Southern New England Telecommunications Corporation, et al. - Docket No. 3:97CV00810 (AHN)**
AT&T Corp. v. The Southern New England Telecommunications Corporation, et al. - Docket No. 3:97CV01056 (JBA)

Dear Judge Fitzsimmons:

I write this letter to advise the Court formally of SNET's position that all discovery, and all other proceedings in these two cases, other than a motion directed to the issue of primary jurisdiction, should be stayed until SNET's primary jurisdiction motion has been resolved by Judge Nevas, and to request that this issue be addressed during our June 11, 1997 telephone conference. During our chambers conference on May 22, 1997, and our telephone conference on June 5, 1997, I stated that SNET reserved all rights with regard to the staying of discovery and all other motion practice. I also committed my client to work with opposing counsel in good faith to narrow the scope of MCI's first request for production of documents, and to agree upon a briefing schedule for Rule 12(b) motions. SNET has fully honored these commitments.

Under the current schedule, SNET is committed to file its motion to dismiss or stay on primary jurisdiction grounds on June 23, 1997. Opposition briefs are due on July 18, 1997, and SNET's reply brief on July 28, 1997. Under this time frame, it is quite likely that, absent a stay of discovery, SNET will be obligated to comply with MCI's document request while SNET's primary jurisdiction motion is *sub judice*.

SNET believes that the merits of its primary jurisdiction motion are compelling. *See, e.g., GTE Sprint Communications Corp. v. Downey*, 628 F.Supp. 193, 195-96 (D.Conn. 1986) (Nevas, J.) (staying action, on primary jurisdiction grounds, involving, *inter alia*, MCI and SNET, pending consideration by Federal Communications Commission). SNET further believes that it is likely that this matter will, at a minimum, be stayed pending the conclusion of proceedings before the Federal Communications Commission. *Id* at 196.

Attachment

Commencing discovery in this action, as currently envisioned, and while the primary jurisdiction motion is pending, may prove to be entirely unnecessary, simply overbroad, or seek irrelevant information. This is a substantial concern to SNET, because it is apparent that, despite the narrowing of MCI's document requests, discovery in this matter will be voluminous, time consuming, and expensive.

SNET is prepared, of course, promptly to file with the Court a motion to stay discovery and all other proceedings, pending resolution of its primary jurisdiction motion. It is my belief, having spent substantial time considering this issue, that such a motion, however, may not be the most efficient way of raising and resolving said issue. Accordingly, I have placed SNET's concerns in this letter and copied all counsel of record in the hope that the subject of this letter be addressed during the course of our telephone conference on June 11, 1997.

Very truly yours,

Robert M. Langer
RML:kmn

cc: Paul E. Knag, Esq.
Lee A. Freeman, Jr., Esq.
David L. Belt, Esq.
Madelyn M. DeMatteo, Esq.
Alfred J. Brunetti, Esq.
Edward J. Fitzgerald, Esq.

F:\DATA\C_I\76\00096876\B11\LTR0001_.YJM

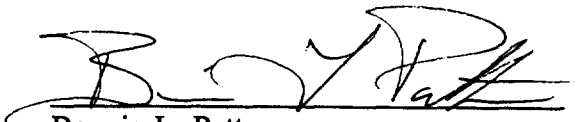
CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of June, 1997 a copy of the foregoing has been sent to the following:

By Fax & Overnight Courier
Paul E. Knag, Esq.
Joshua W. van Hulst, Esq.
Cummings & Lockwood
Four Stamford Plaza
P.O. Box 120
Stamford, CT 06904-0120

By Hand Delivery
David L. Belt, Esq.
Jacobs, Grudberg, Belt & Dow, P.C.
350 Orange Street
P.O. Box 606
New Haven, CT 06503-0606

By Overnight Courier
Lee A. Freeman, Jr., Esq.
Glynna W. Freeman, Esq.
Chris C. Gair, Esq.
Freeman, Freeman & Salzman, P.C.
401 North Michigan Ave., Ste. 3200
Chicago, IL 60611-4207



Bonnie L. Patten

P:9676\811\BRF0002_.JRB

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MCI TELECOMMUNICATIONS CORPORATION, Plaintiff, v. THE SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY and SNET AMERICA, INC., Defendants.	:	CIVIL ACTION NO. 3:97CV00810 (AHN)
AT&T CORP., Plaintiff, v. SOUTHERN NEW ENGLAND TELEPHONE COMPANY, SNET AMERICA, INC. and SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, Defendants.	:	CIVIL ACTION NO. 3:97CV01056 (AHN) JUNE 23, 1997

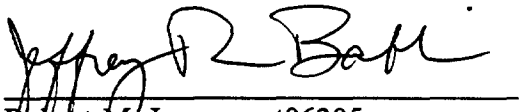
DEFENDANTS' MOTION TO DISMISS OR STAY
ON GROUNDS OF PRIMARY JURISDICTION

Pursuant to principles of primary jurisdiction, all defendants move to dismiss the complaints or stay all proceedings on the complaints in these consolidated actions under Fed. R. Civ. P. 12(b)(1). The issues raised in the complaints are within the primary jurisdiction of the Federal Communications Commission ("FCC"). In support of this motion, the defendants rely on the accompanying memorandum of law and supporting exhibits.

ORAL ARGUMENT REQUESTED

WHEREFORE, the defendants respectfully request that the Court dismiss the complaints or stay all proceedings on the complaints.

DEFENDANTS
SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY and SNET AMERICA, INC.

By: 

Robert M. Langer, ct06305
Jeffrey R. Babbin, ct10859
Bonnie L. Patten, ct12931
Wiggin & Dana
One CityPlace
Hartford, CT 06103-3402
(860) 297-3700

Madelyn M. DeMatteo, ct13222
Alfred J. Brunetti, ct08026
Edward J. Fitzgerald, ct08471
227 Church Street
New Haven, CT 06510
(203) 771-5200

ORDER

Having considered the defendants' motion to dismiss or stay on grounds of primary jurisdiction, it is hereby ORDERED that said motion is GRANTED.

Dated at Bridgeport, Connecticut this _____ day of _____, 1997.

BY THE COURT

_____
Alan H. Nevas
Senior United States District Judge

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of June, 1997 a copy of the foregoing has been sent to the following:

By Fax & Overnight Courier
Paul E. Knag, Esq.
Joshua W. van Hulst, Esq.
Cummings & Lockwood
Four Stamford Plaza
P.O. Box 120
Stamford, CT 06904-0120

By Hand Delivery
David L. Belt, Esq.
Jacobs, Grudberg, Belt & Dow, P.C.
350 Orange Street
P.O. Box 606
New Haven, CT 06503-0606

By Overnight Courier
Lee A. Freeman, Jr., Esq.
Glynna W. Freeman, Esq.
Chris C. Gair, Esq.
Freeman, Freeman & Salzman, P.C.
401 North Michigan Ave., Ste. 3200
Chicago, IL 60611-4207

Bonnie L. Patten

P:9676\811\MOT0001_.JRB

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MCI TELECOMMUNICATIONS CORPORATION, Plaintiff, v. THE SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY and SNET AMERICA, INC., Defendants.	:	CIVIL ACTION NO. 3:97CV00810 (AHN)
AT&T CORP., Plaintiff, v. SOUTHERN NEW ENGLAND TELEPHONE COMPANY, SNET AMERICA, INC. and SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION, Defendants.	:	CIVIL ACTION NO. 3:97CV01056 (AHN) JUNE 23, 1997

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION
TO DISMISS OR STAY ON GROUNDS OF PRIMARY JURISDICTION

TABLE OF CONTENTS

INTRODUCTION

Principles of primary jurisdiction dictate that this Court not exercise jurisdiction over MCI's and AT&T's claims at this time. MCI and AT&T have asked this Court to determine what steps a local telephone company may or may not take to provide a service known as a "PIC freeze" to protect its customers from slamming, and to enforce that policy by issuing an injunction.[1/] Each and every one of their claims requires an analysis of a telecommunications carrier's obligations under the Communications Act. To do what has been requested of it, the Court would have to decide what practices are "just and reasonable" under Section 201(b) of the Communications Act, or are "unjust or unreasonable discrimination" under Section 202(b); determine how those practices fit with the FCC's existing rules and precedents; and tailor those practices to whatever rules the FCC may issue under the slamming provision of the Telecommunications Act of 1996, 47 U.S.C. § 258. The Court would also have to interpret the limits placed by Congress on disclosure of customer information in the 1996 Act, 47 U.S.C. § 222. The Court would have to do all this based on a record limited to SNET's practices without the benefit of a fully developed record on similar practices in other jurisdictions; moreover, the Court would have to ensure itself that any solution it devised would not interfere with Congress' and the FCC's policies for both stimulating competition and protecting consumers, not only in the long distance market, but also in the local market as provided by the 1996 Act.

Congress has given the FCC extensive authority over the practices complained of in these cases. Consequently, this Court should defer to the FCC on all of MCI's and AT&T's claims. MCI and AT&T have acknowledged the FCC's authority and the pressing need for FCC guidance

---

[1] The terms used in this Introduction are defined or explained in the Factual Background section beginning on page 2.

by asking the FCC to issue detailed rules, and they have based that request on the same allegations of SNET's conduct alleged again in their complaints in this Court. The Court should heed MCI's and AT&T's own pleas to the FCC and let the FCC have the first word, by requiring MCI and AT&T to pursue a rulemaking at the FCC or, if they wish to preserve their claims for damages and injunctive relief, to file their complaints with the the FCC. Accordingly, the Court should dismiss or stay these cases so that the FCC can exercise its primary jurisdiction over these claims.

FACTUAL BACKGROUND

In their complaints, MCI Telecommunications Corporation ("MCI") and AT&T Corp. ("AT&T") ask that the Court determine the legality of a service offered by SNET[2/] to its customers to reduce incidences of a practice known in the trade as "slamming."[3/] The Federal Communications Commission ("FCC") has noted that slamming by long distance carriers generates more consumer complaints than any other common carrier practice within the agency's jurisdiction. See FCC, Common Carrier Scorecard 3 (Fall 1996). See generally Nicole C.

---

[2] MCI and AT&T have named the same three defendants in their complaints: The Southern New England Telephone Company ("SNET") is a provider of local exchange service and in-state (i.e., intraLATA) toll service in virtually all parts of Connecticut. SNET America, Inc. ("SNET America") is a provider of interstate (i.e., interLATA) and international long distance service. Both SNET and SNET America are wholly owned subsidiaries of a telecommunications holding company, Southern New England Telecommunications Corporation. Although both MCI and AT&T name the holding company as a defendant, their complaints are devoid of any allegations concerning that company.

[3] Slamming is the unauthorized change of a consumer's primary interexchange carrier or "PIC." In the telecommunications industry, a long distance carrier is known as an interexchange carrier or "IXC," and a provider of local telephone service is known as a local exchange carrier or "LEC."

Daniel, Note, A Return to Written Consent: A Proposal to the FCC to Eliminate Slamming, 49 Fed. Comm. L.J. 227 (1996).[4/]

As a result, the FCC has paid particular regulatory attention to the slamming issue, leading to numerous enforcement actions and rulemaking proceedings. In 1992, the FCC adopted rules to prevent telemarketing abuses by long distance carriers. See 47 C.F.R. § 64.1100, promulgated at 57 Fed. Reg. 4740 (Feb. 7, 1992).[5/] Noting that consumer complaints of unauthorized switches in their long distance service were nevertheless continuing to rise exponentially, the FCC took further action on its own initiative in 1995 to weed out deceptive and misleading letters of agency.[6/] See 47 C.F.R. § 64.1150, promulgated at 60 Fed. Reg. 35846 (July 12, 1995).[7/] Congress also paid attention to the slamming problem when it amended the Communications Act of 1934 ("Communications Act") by passing the federal Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996). In the 1996 Act, Congress directed the FCC to prescribe mandatory procedures, binding on carriers submitting a change request and on local

---

4 Even the Connecticut Department of Public Utility Control was the victim of slamming in 1996. See Even DPUC Gets Snookered, Connecticut Post, Dec. 17, 1996, at C1.

5 The FCC adopted these rules in the Report and Order, In re Matter of Policies & Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd. 1038 (FCC 1992) ("1992 Order") (Exh. 1).

6 A letter of agency ("LOA") is a document signed by a customer, often included with promotional material, stating that the customer has selected a long distance carrier as its PIC.

7 The FCC adopted these rules in the Report and Order, In re Matter of Policies & Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd. 9560 (FCC 1995) ("1995 Order") (Exh. 2). Deceptive marketing practices employed by some long distance companies have included, for example, carrier change forms disguised as contest entry forms, prize claim forms, and solicitations for charitable contributions. Notice of Proposed Rule Making, In re Matter of Policies & Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 9 FCC Rcd. 6885, 6886 (¶ 6 & nn.18-19) (FCC 1994) ("1994 NPRM") (Exh. 3). MCI and AT&T opposed the FCC's efforts in 1995 to strengthen the protection offered by its slamming rules. See 1995 Order, 10 FCC Rcd. at 9570-71 (¶ 20), 9572 (¶ 24).

telephone companies executing the change, for verifying a consumer's selection of a new carrier. See 47 U.S.C. § 258. The FCC has stated that it intends to initiate a rulemaking to fulfill that mandate. See RCI Long Distance, Inc. v. New York Tel. Co., 11 FCC Rcd. 8090, 8100 (¶ 21), 8105 (¶ 33) (Common Carrier Bureau 1996) (Exh. 4).

Since issuing its rules, the FCC has remained vigilant in its efforts to eradicate slamming. In fact, just last year, in 1996, the FCC settled by consent decree charges that AT&T had "willfully violated the Commission's PIC change rules and orders," In re AT&T Corp., 11 FCC Rcd. 17312, at ¶ 2 (Common Carrier Bureau 1996) (Exh. 5), and that MCI had slammed consumers by means that were "particularly egregious," 11 FCC Rcd. 1821, at ¶ 8 (Common Carrier Bureau 1996) (Exh. 6). The FCC's charges against MCI typify the problem continuing to plague the industry: "It appears that . . . MCI submitted PIC change requests to [GTE] and Pacific Bell, both based on apparently forged LOAs." Id. The FCC was "particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs, which turn out to be falsified or forged, to effect changes in consumers' long distance service." Id. ¶ 10. The FCC gave notice of its intent to step up its enforcement activity, when observing as follows: "The pervasiveness of the problem suggests that our current administration of the law has not produced sufficient deterrence to non-compliance [with FCC rules] and the carriers have little incentive to curtail practices that lead to consumer complaints." Id.; see also 11 FCC Rcd. 12632 (Common Carrier Bureau 1996) (MCI consent decree) (Exh. 7).

The FCC has also recently addressed slamming through its complaint jurisdiction. In RCI Long Distance, Inc. v. New York Telephone Co., 11 FCC Rcd. 8090 (Common Carrier Bureau 1996) (Exh. 4), a long distance carrier filed a complaint with the FCC (not with a court) to

challenge the legality of PIC freezes.[8/] The FCC denied RCI's complaint that NYNEX and Bell Atlantic had unlawfully instituted cumbersome procedures to verify PIC change requests for payphone customers. Just as in the instant cases, the plaintiff had contended that the verification procedures were inconsistent with the FCC's own rules and orders and interfered with its relationship with telephone customers. Id. ¶¶ 7-8. And just as in the instant cases, the local telephone companies argued that their procedures were necessary to protect their customers from fraudulent practices. Id. ¶¶ 9-10. The FCC found that the verification practices not only did not violate any of the FCC's rules, but they actually helped ensure that the long distance carriers had complied with the rules. Id. ¶¶ 11-19. At the same time, however, the FCC cautioned that it would have to evaluate each local telephone company's procedures for confirming PIC change requests on its own terms in the event of a complaint, and that its evaluation would have to take into account any rules that the FCC intended to promulgate pursuant to the 1996 Act, 47 U.S.C. § 258. Id. ¶¶ 20-21.

The RCI decision did not hinder the long distance companies' campaign to limit consumer protection against slamming. Just thirteen days after the FCC released the RCI decision, MCI filed an informal complaint with the FCC concerning SNET's PIC freeze service. MCI contended that the service was anti-competitive and deceptive and, therefore, was in violation of the general requirement in Section 201(b) of the Communications Act that all practices be "just and reasonable." MCI's Informal Complaint at 2 (Exh. 8). SNET responded to the FCC with a complete justification for its service, noting that the practice was just and reasonable "because

---

[8] A PIC freeze is a service offered by a local telephone company that precludes acceptance of a PIC change request submitted by a long distance carrier without directly confirming with the customer that it authorized the change. Unlike SNET's PIC freeze service at issue in these cases, which a customer must affirmatively request, in RCI the local telephone companies placed a PIC freeze on all payphone customers' lines.

it balances the need to protect consumers with an IXC's need for an automated PIC change process." SNET's Response at 3 (Exh. 9).

Apparently not satisfied with SNET's response, MCI filed a formal Petition for Rulemaking with the FCC on March 18, 1997. MCI requested, pursuant to 47 C.F.R. § 1.401, that the FCC "institute a rulemaking to regulate the solicitation, by any carrier or its agent, of primary interexchange carrier (PIC) 'freezes' or other carrier restrictions on the switching of a consumer's primary interexchange (interLATA and intraLATA toll) and local exchange carrier." Petition for Rulemaking at 1 (Exh. 10). As in its informal complaint against SNET, MCI contended that PIC freezes violate the "just and reasonable requirement" of Section 201(b). Id. at 8. MCI also described the need for FCC action as "essential." Id. at 2. While MCI illustrated its concerns by describing SNET's and Ameritech's PIC freeze service, id. at 5-8, the Petition characterized the issue as extending in scope beyond the practices of any single local exchange carrier, and it noted that the details of a PIC freeze may vary from company to company. Id. at 2-5. MCI also urged the FCC to issue a clear and consistent set of guidelines on PIC freezes that would facilitate Congress' intent in the 1996 Act, 47 U.S.C. §§ 251-261, to eliminate monopoly local telephone service. Id. at 2-3, 8. In MCI's view, rules governing PIC freezes would have consequences well beyond the long distance market for which the freezes were first instituted.

Consequently, MCI proposed in its Petition the text of a rule that -- like the injunctive relief sought from this Court -- would not ban PIC freezes but would eliminate what MCI considered the unfair and deceptive aspects of PIC freezes. Id. at 8-9. The FCC has since solicited public comment on whether it should grant the Petition and institute rulemaking